

1 Rene L. Valladares  
2 Federal Public Defender  
3 Nevada State Bar No. 11479  
4 \*Amelia L. Bizzaro  
5 Assistant Federal Public Defender  
6 Wisconsin State Bar No. 1045709  
7 411 E. Bonneville Ave., Ste. 250  
8 Las Vegas, Nevada 89101  
9 (702) 388-6577  
10 Amelia\_Bizzaro@fd.org

\*Attorney for Petitioner Hector Leonard Jardine

11 UNITED STATES DISTRICT COURT  
12 DISTRICT OF NEVADA

13 Hector Leonard Jardine,

14 Petitioner,

15 v.

16 Brian Williams, *et al.*,

17 Respondents.

Case No. 2:16-cv-02637-RFB-NJK

**Unopposed motion for extension of  
time to file opposition to  
respondent's second motion to  
dismiss**

**(Second Request)**

## ARGUMENT

Petitioner Hector Jardine moves this Court for the entry of an order extending his deadline for filing an opposition to the warden's motion to dismiss by 60 days until September 11, 2022.

By email, counsel for the warden, Senior Deputy Attorney General Charles L. Finlayson, conveyed that he does not object to this request.

The procedural history of this case is a bit complicated. After Hector Jardine filed his original pro se § 2254 petition, the Court ordered Jardine to “show cause in writing why [his] petition should not be dismissed with prejudice as time-barred”.<sup>1</sup> Jardine subsequently filed motions and exhibits demonstrating, as this Court concluded in its December 17, 2017 Order, that he had shown “sufficient cause to not dismiss his petition as untimely and to allow this matter to proceed forward.”<sup>2</sup> In its Order, the Court conducted an analysis under the equitable tolling doctrine and concluded (1) Jardine’s “appointed counsel abandoned him in much the same way in *Gibbs* was abandoned by his attorney”; and (2) Jardine “demonstrates that he has been pursuing his rights at least as diligently as the petitioner in *Gibbs*, if not more so.”<sup>3</sup>

The Court appointed counsel to represent Jardine, and he filed his first amended petition on April 25, 2019.<sup>4</sup> Jardine also filed motions for leave to file a second amended petition, discovery, and a stay so that he may return to state court to exhaust a claim.<sup>5</sup> The court granted all three requests.<sup>6</sup>

<sup>1</sup> ECF No. 7 at 1.

<sup>2</sup> ECF No. 10 at 4.

<sup>3</sup> ECF No. 10 at 3.

<sup>4</sup> ECF No. 28.

<sup>5</sup> ECF Nos. 29, 30, 37.

<sup>6</sup> ECF Nos. 36, 38.

1           Upon competition of the state litigation, Jardine moved to reopen the case  
2 and proceed on his previously filed first amended petition on March 10, 2021.<sup>7</sup> The  
3 Court agreed.<sup>8</sup>

4           Williams again moved to dismiss Jardine's first amended petition on July 16,  
5 2021.<sup>9</sup> Jardine filed a single motion to extend his deadline for filing an opposition to  
6 the motion to dismiss before filing a motion to strike, or in the alternative, motion  
7 for more definite statement on October 6, 2021.<sup>10</sup> At the same time, Jardine filed a  
8 motion to extend his deadline for filing a opposition until after this Court ruled on  
9 his motion to strike.<sup>11</sup> About a week later, Williams filed an unopposed motion to  
10 extend his deadline for responding to Jardine's motion to strike.<sup>12</sup>

11           On October 16, 2021, this Court entered a minute order granting Williams's  
12 request for an extension.<sup>13</sup> Williams timely filed an opposition to Jardin's motion to  
13 strike on December 6, 2021.<sup>14</sup>

14           Jardine sought an extension for filing a reply in support of his motion to  
15 strike on December 10, 2021.<sup>15</sup> In a single minute order, this Court granted  
16 Jardine's prior motion to extend the time for filing an opposition to the motion to  
17 dismiss and his motion to extend the time for filing a reply in support of the motion  
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20           <sup>7</sup> ECF No. 39.

21           <sup>8</sup> ECF No. 41.

22           <sup>9</sup> ECF No. 41.

23           <sup>10</sup> ECF Nos. 49, 52.

24           <sup>11</sup> ECF No. 53.

25           <sup>12</sup> ECF No. 54.

26           <sup>13</sup> ECF No. 55.

27           <sup>14</sup> ECF No. 56.

<sup>15</sup> ECF No. 57.

1 to strike.<sup>16</sup> Instead of setting a deadline for the opposition after a ruling on the  
2 motion to strike, this Court gave Jardine until January 17, 2022 to file an  
3 opposition to the motion to dismiss.<sup>17</sup>

4 On January 5, 2022, Jardine filed his third motion for discovery, this time  
5 seeking a revised copy of the phone log counsel previously received with phone  
6 numbers.<sup>18</sup> Williams did not oppose that request.<sup>19</sup>

7 Jardine moved to stay the briefing of the state's first motion to dismiss until  
8 it ruled on his motion to strike.<sup>20</sup>

9 On February 3, 2022, this Court entered an order granting Jardine's motion  
10 to strike. It gave Williams 60 days to file a new motion to dismiss.<sup>21</sup> As a result of  
11 that, it denied the first motion to dismiss, and it also granted Jardine's motion for  
12 discovery related to phone logs.<sup>22</sup>

13 Williams filed a new motion to dismiss on April 4, 2022, and the Nevada  
14 Department of Corrections made an initial disclosure of the phone logs on April 20,  
15 2022.<sup>23</sup> Following the initial disclosure, the parties remained in close contact to  
16 ensure a completed log was provided. On May 4, 2022, Jardine sought an extension  
17 of his deadline for filing an opposition while the parties pursued a complete phone  
18 log.<sup>24</sup> This Court granted the request, making Jardine's deadline today, July 13,

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20 <sup>16</sup> ECF No. 58.

21 <sup>17</sup> ECF No. 58.

22 <sup>18</sup> ECF No. 60.

23 <sup>19</sup> ECF No. 62.

24 <sup>20</sup> ECF No. 63.

25 <sup>21</sup> ECF No. 64 at 5.

26 <sup>22</sup> ECF No. 64.

27 <sup>23</sup> ECF No. 65.

<sup>24</sup> ECF No. 66.

2022.<sup>25</sup>

Discovery was completed on May 31, 2022.

Jardine anticipated meeting today's deadline, but has been unable to complete Jardine's opposition. Recently, counsel's time was unexpectedly consumed by a capital § 2255 case, for which she is co-lead counsel. It has culminated in a visit to Terre Haute on July 7–8. Counsel was also recently assigned a case with an AEDPA deadline of July 15 that counsel had to prioritize.

With the completion of discovery at the end of May, counsel anticipates meeting the September 11, 2022 deadline she requests here.

Accordingly, Jardine respectfully asks this Court to grant a 60-day extension for filing an opposition to Williams' motion to dismiss until September 11, 2022

Dated July 13, 2022.

Respectfully submitted,

Rene L. Valladares  
Federal Public Defender

/s/ Amelia L. Bizzaro  
Amelia L. Bizzaro  
Assistant Federal Public Defender

IT IS SO ORDERED:

  
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RICHARD F. BOULWARE, II  
UNITED STATES DISTRICT JUDGE

DATED this 19th day of July, 2022.

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<sup>25</sup> ECF No. 67.